MOTION FILED
JUN 3 1978

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977.

No. 77-5781

FRANK L. RAKAS AND LONNIE L. KING,
Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT.

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE IN SUPPORT OF THE RESPONDENT, OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC.

FRED E. INBAU, ESQ.,
FRANK CARRINGTON, ESQ.,
WAYNE W. SCHMIDT, ESQ.,
ROBERT SMITH, ESQ.,
Americans for Effective Law Enforcement, Inc.,
960 State National Bank Plaza,
Evanston, Illinois 60201,
Counsel for Amicus Curiae.

Of Counsel:
JAMES P. COSTELLO,
JOHN F. FENNIG,
RICHARD J. VITTENSON,
Americans for Effective Law Enforcement, Inc.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

TABLE OF CONTENTS.

PAGE

Table of Authorities ii

Motion for Leave to File a Brief *Amicus Curiae* in Support of the Respondent 1

Interest of the *Amicus Curiae* 2

Brief *Amicus Curiae* in Support of the Respondent 5

Argument:

I. The Scope of the Exclusionary Rule Should Not Be Expanded by According Standing to Petitioners' Objection to an Allegedly Illegal Search of Another's Automobile 5

A. To Grant Standing in Cases Such as This Would Greatly Expand the Scope of the Exclusionary Rule 6

B. In a Period of Growing Disenchantment with, and Doubt About the Efficacy of, the Exclusionary Rule, Its Expansion, Based on Standing, Would Be Unwarranted 8

C. The Instant Case in Particular Is Not the Sort of Case That Would Mandate the Expansion of the Exclusionary Rule 12

Conclusion 16

TABLE OF AUTHORITIES.

Cases.

Adams v. Williams, 407 U. S. 143 (1972) 14
Alderman v. United States, 394 U. S. 165 (1969) 6, 7
Bivens v. Six Unknown Named Federal Narcotics Agents, 403 U. S. 388 (1971) 9, 10, 11, 12, 13
Coolidge v. New Hampshire, 403 U. S. 443 (1971) 9
Linkletter v. Walker, 381 U. S. 618 (1965) 12
Mapp v. Ohio, 367 U. S. 643 (1961) 8
Stone v. Powell, 428 U. S. 465 (1976) 8, 9, 10, 11, 14, 15
United States v. Calandra, 414 U. S. 338 (1974) 12
United States v. Ceccolini, ... U. S. ....., 22 Cr. L. 3063, 3070 (1978) 12
United States v. Janis, 428 U. S. 433 (1976) 12
Walder v. United States, 347 U. S. 62 (1954) 12
Weeks v. United States, 232 U. S. 383 (1914) 8, 10

Other Authorities.

Barrett, *Exclusion of Evidence Obtained by Illegal Searches —A Comment on People* v. *Cahan*, 43 Calif. L. Rev. 565 (1965) 9
Burns, *Mapp* v. *Ohio: An All-American Mistake*, 19 DePaul L. Rev. 80 (1961) 9
Cannon, *Is the Exclusionary Rule in Failing Health: Some New Data and a Plea Against a Precipitous Conclusion*, 62 Ky. L. Rev. 349 (1974) 10
Cox, *The Decline of the Exclusionary Rule: An Alternative to Injustice*, 4 Sw. U. L. Rev. 68 (1972) 9

Effect of Mapp v. *Ohio on Police Search and Seizure Practice in Narcotics Cases*, 4 Colum. J. L. and Soc. Prob. 87 (1968) 9
The Exclusionary Rule Regarding Illegally Seized Evidence: An International Symposium, 52 J. Crim. L., C. and P. S. 245-292 (1961) 9
Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 Calif. L. Rev. 929, 951-954 (1965) 9
Inbau, *Restrictions in the Law of Interrogations and Confessions*, 52 Nw. U. L. Rev. 77 (1958) 9
Inbau, Thompson and Sowle, *Cases and Comments on Criminal Justice: Criminal Law Administration*, 1-84 (1968) 9
Lafave, *Improving Police Performance Through the Exclusionary Rule (pts. 1 and 2)*, 30 Mo. L. Rev. 391, 566 (1965) 9
Lafave and Remington, *Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions*, 63 Mich. L. Rev. 987 (1965) 9
Miles, *The Ailing Fourth Amendment: A Suggested Cure*, 63 A. B. A. J. 365 (1977) 9
Morris & Hawkins, *The Honest Politician's Guide to Crime Control*, 101 (1970) 9
Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. Chi. L. Rev. 665 (1970) 9, 10
Plumb, *Illegal Enforcement of the Law*, 24 Cornell L. Q. 337 (1939) 9
Rosenblatt and Rosenblatt, *A Legal House of Cards*, Harper's, July 1977, p. 16 9
Satlin, *An Alternative to the Exclusionary Rule*, 26 JAG J. 255 (1972) 9

Schaefer, *The Fourteenth Amendment and the Sanctity of the Person*, 64 Nw. U. L. Rev. 1 (1969) 9

Schlesinger, *Exclusionary Injustice, The Problem of Illegally Obtained Evidence*, New York, Marcel Dekker, Inc. (1977) 9

Spiotto, *Search and Seizure: An Empirical Study of the Exclusionary Rule and Its Alternatives*, 2 Journ. Legal Studies 243 (1973) 10

Student Comments: The Tort Alternative to the Exclusionary Rule in Search and Seizure, 63 J. Crim. L., C. and P. S. 256 (1972) 9

Vance, *Why the Exclusionary Rule Should Be Modified*, The Prosecutor, Vol. 7, No. 5, p. 399 (1971) 9

Waite, *Judges and the Crime Burden*, 54 Mich. L. Rev. 169 (1955) 9

Wigmore, *Using Evidence Obtcined by Illegal Search and Seizure*, 8 A. B. A. J. 479 (1922) 9

8 Wigmore, *Evidence*, Section 2184a (McNaughton rev., 1961) 9

Wingo, *Growing Disillusionment with the Exclusionary Rule*, 25 Sw. L. J. 573 (1971) 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977.

No. 77-5781.

FRANK L. RAKAS AND LONNIE L. KING,
Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT.

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF THE RESPONDENT.

Americans for Effective Law Enforcement, Inc. respectfully moves this Court for leave to file a brief, *amicus curiae*, in support of the respondent in the instant case. This motion is made pursuant to Rule 42 of the Supreme Court Rules. The respondent has consented to our filing; the petitioner has not consented to our request for consent to file. Accordingly, we are moving the Court directly for leave to file. Letters from counsel for the petitioner and the respondent have been filed with the Clerk of this Court. The interest of the *amicus curiae* and our reasons for desiring to file are set forth below.

INTEREST OF AMICUS CURIAE.

Americans for Effective Law Enforcement, Inc. (AELE) is a national not-for-profit citizens organization incorporated under the laws of the State of Illinois. As stated in its by-laws, the purposes of AELE are:

1. To explore and consider the needs and requirements for the effective enforcement of the criminal law.
2. To inform the public of these needs and requirements, to the end that the courts will administer justice based upon a due concern for the general welfare and security of law abiding citizens.
3. To assist the police, the prosecution, and the courts in promoting a more effective and fairer administration of the criminal law.

In furtherance of these objectives, AELE seeks to represent in our courts, nationwide, the concern of the average citizen with the problems of crime and of police effectiveness to deal with crime.

The interests of *amicus* in the instant case stem from the importance of the issue involved, the resolution of which will have a direct and material impact upon the effectiveness of law enforcement nationwide. The issue involved in this case is whether or not standing to object to an allegedly illegal search and seizure should be accorded to individuals against whom evidence was seized from the car in which they were passengers.

If standing were to be accorded to the petitioner it would result in a major, and in our view unwarranted, expansion of the Exclusionary Rule. We will seek to point out to the Court reasons why any such expansion would have a direct and adverse effect on the enforcement of the criminal law.

Accordingly, *amicus* respectfully moves this Court for leave to file our brief.

Respectfully submitted,

FRED E. INBAU, ESQ.,
FRANK CARRINGTON, ESQ.,
WAYNE W. SCHMIDT, ESQ.,
ROBERT SMITH, ESQ.,
Americans for Effective Law Enforcement, Inc.
960 State National Bank Plaza,
Evanston, Illinois 60201,
Counsel for Amicus Curiae.

Of Counsel:
JAMES P. COSTELLO,
JOHN F. FENNIG,
RICHARD J. VITTENSON,
Americans for Effective Law Enforcement, Inc.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977.

No. 77-5781.

FRANK L. RAKAS AND LONNIE L. KING,
Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT.

BRIEF AMICUS CURIAE IN SUPPORT OF THE RESPONDENT.

ARGUMENT.

I.

THE SCOPE OF THE EXCLUSIONARY RULE SHOULD NOT BE EXPANDED BY ACCORDING STANDING TO PETITIONERS' OBJECTION TO AN ALLEGEDLY ILLEGAL SEARCH OF ANOTHER'S AUTOMOBILE.

Amicus will not reiterate the legal arguments made by Respondent State of Illinois in the instant case, although we agree with them and wish to associate ourselves with them. We will confine our argument to the issue which we believe involves the most important policy consideration in this case: whether the Exclusionary Rule should be expanded to en-

compass those whose Fourth Amendment rights have not directly been violated.

The issue of the continued viability of the Exclusionary Rule, as such, is not before this Court in the instant case; consequently we will not address our argument to those cases in which the Rule is applied as a sanction when the party actually aggrieved by an illegal search seeks to suppress evidence against him.

We submit, however, that to grant standing to invoke the Rule to Petitioners Rakas and King would bring about an unwarranted *expansion* of the scope of the Rule and that valid criminal justice policy considerations militate against such an expansion.

Our argument, which will be brief, can be summarized as follows:

1. To grant standing in cases such as this would greatly expand the scope of the Exclusionary Rule.
2. In a period of growing disenchantment with, and of doubt about the efficacy of, the Rule, such an expansion would be unwarranted.
3. The instant case, in particular, is not such a case as would demand expansion of the Rule.

We believe that these policy considerations, underlying the sound legal arguments made by Respondent State of Illinois, contribute to the necessity for affirmance in the instant case.

A. To Grant Standing in Cases Such as This Would Greatly Expand the Scope of the Exclusionary Rule.

Mr. Justice White, writing for the majority of the Court in *Alderman* v. *United States,* 394 U. S. 165 (1969), enunciated the rule relating to standing to contest an illegal search and seizure:

> The established principle is that the suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence. 394 U. S., at 172.

Thus, the *scope* of the suppression doctrine is limited to those actually aggrieved by the violation of Fourth Amendment rights. This limitation, we submit, is grounded on the soundest public policy reasons. Any other interpretation of the Exclusionary Rule would result in a broadening of the scope of the Rule which would have the most adverse effect upon the criminal justice system.

Many searches and seizures involve a single party: a lone bandit in his getaway car, one in possession of narcotics alone in his apartment, a single individual on the street with an unlawful firearm on his person and so on. Other searches and seizures, however, involve multi-criminal operations: holdup gangs, terrorists and organized crime conspiracies and narcotics distribution rings are but a few examples.

If the Exclusionary Rule were to be expanded so that *anyone* against whom illegally seized evidence might be used could object to its admission, the number of suppression hearings would be multiplied by a factor of as many individuals who were party to any griven criminal action and who might be incriminated.

This would, of course, place an additional burden upon our already overburdened courts; but, more importantly, any such expansion would exact a high price from our criminal justice system.

The fact of this expansion, and its impact upon the system was recognized by this Court in *Alderman, supra:*

> . . . we are not convinced that the additional benefits of extending the Exclusionary Rule to other defendants would justify further encroachment upon the public interest in prosecuting those accused of crime and having them acquitted or convicted on the basis of all the evidence which expresses the truth. 394 U. S., at 174.

Common sense dictates that if standing to object to the use of illegally seized evidence were extended to parties other than those actually aggrieved by the search and seizure, the boundaries of the Exclusionary Rule would be increased immeasurably. The question then arises whether this extension would benefit the system.

B. In a Period of Growing Disenchantment with, and Doubt About the Efficacy of, the Exclusionary Rule, Its Expansion, Based on Standing, Would Be Unwarranted.

There is surely no more controversial doctrine in the field of criminal justice today than the Exclusionary Rule. The Rule mandates that evidence of crime, no matter how relevant and probative of guilt it may be, must be excluded at the trial of the individual from whom it was seized if law enforcement officers violated that individual's Fourth Amendment rights in searching for and seizing[1] such evidence.

The Rule was imposed in federal cases, by this Court under its supervisory power over federal courts, in *Weeks* v. *United States*, 232 U. S. 383 (1914); and upon the states, as a doctrine of Constitutional dimension, in *Mapp* v. *Ohio*, 367 U. S. 643 (1961). The primary rationale for the Rule was that suppression of the products of Fourth Amendment violations would deter law enforcement officers from committing them.[2]

We need only summarize the arguments against the continued viability of the Exclusionary Rule. This Court is well aware of

1. As this is a search and seizure case we will confine our argument to the Fourth Amendment issues which involve the Exclusionary Rule.

2. Another rationale for the Rule was the "imperative of judicial integrity", that is, that courts should not permit the government to profit from the illegal acts and/or the mistakes of its officers. Mr. Justice Powell analyzed this in *Stone* v. *Powell*, 428 U. S. 465 (1976) and found this theoretical basis for the Rule wanting in cases not involving suppression of evidence in the criminal trial of the party actually aggrieved. 428 U. S. 465, at 485. He noted standing in particular as an area in which public policy outweighed the benefits of expanding the scope of the Rule. *Ibid* at 489.

them and, indeed, several Justices have expressed disillusionment with the Rule and its impact.[3]

Literature critical of the Rule, from every aspect of the ideological spectrum in the criminal justice system abounds.[4]

3. See, *e.g.*, *Bivens* v. *Six Unknown Named Federal Agents*, 403 U. S. 388 (1971), Burger, C. J., dissenting. *Coolidge* v. *New Hampshire*, 403 U. S. 443 (1971), Blackmun, J., joining in Mr. Justice Black's dissenting opinion. *Stone* v. *Powell*, *Wolff* v. *Rice*, 428 U. S. 465 (1976), Powell, J., majority opinion; White, J., dissenting opinion.

4. See, for example Barrett, *Exclusion of Evidence Obtained by Illegal Searches—A Comment on People* v. *Cahan*, 43 Calif. L. Rev. 565 (1965); Burns, *Mapp* v. *Ohio: An All-American Mistake*, 19 DePaul L. Rev. 80 (1961); Cox, *The Decline of the Exclusionary Rule: An Alternative to Injustice*, 4 Sw. U. L. Rev. 68 (1972); Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 Calif. L. Rev. 929, 951-954 (1965); Satlin, *An Alternative to the Exclusionary Rule*, 26 JAG J. 255 (1972); Inbau, *Restrictions in the Law of Interrogations and Confessions*, 52 Nw. U. L. Rev. 77 (1958); Inbau, Thompson and Sowle, *Cases and Comments on Criminal Justice: Criminal Law Administration*, 1-84 (1968); Lafave, *Improving Police Performance Through the Exclusionary Rule (pts. 1 and 2)*, 30 Mo. L. Rev. 391, 566 (1965); Lafave and Remington, *Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions*, 63 Mich. L. Rev. 987 (1965); Morris & Hawkins, *The Honest Politician's Guide to Crime Control*, 101 (1970); *Effect of Mapp* v. *Ohio on Police Search and Seizure Practice in Narcotics Cases*, 4 Colum. J. L. and Soc. Prob. 87 (1968); Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. Chi. L. Rev. 665 (1970); Plumb, *Illegal Enforcement of the Law*, 24 Cornell L. Q. 337 (1939); Schaefer, *The Fourteenth Amendment and the Sanctity of the Person*, 64 Nw. U. L. Rev. 1 (1969); *Student Comments: The Tort Alternative to the Exclusionary Rule in Search and Seizure*, 63 J. Crim. L., C. and P. S. 256 (1972); Waite, *Judges and the Crime Burden*, 54 Mich. L. Rev. 169 (1955); Wigmore, *Using Evidence Obtained by Illegal Search and Seizure*, 8 A. B. A. J. 479 (1922); 8 Wigmore, *Evidence*, section 2184a (McNaughton rev., 1961); Wingo, *Growing Disillusionment with the Exclusionary Rule*, 25 Sw. L. J. 573 (1971); *The Exclusionary Rule Regarding Illegally Seized Evidence: An International Symposium*, 52 J. Crim. L., C. and P. S. 245-292 (1961); Vance, *Why the Exclusionary Rule Should Be Modified*, The Prosecutor, Vol. 7, No. 5, p. 399 (1971); Rosenblatt and Rosenblatt, *A Legal House of Cards*, Harper's, July 1977, p. 16; Miles, *The Ailing Fourth Amendment: A Suggested Cure*, 63 A. B. A. J. 365 (1977).

We especially commend to the Court a recent book, Schlesinger, *Exclusionary Injustice, The Problem of Illegally Obtained Evidence*, New York, Marcel Dekker, Inc. (1977).

This criticism is premised for the most part on the fact that there is little or no empirical evidence that the application of the Rule actually deters illicit police conduct, and the fact of the high cost to society of the inflexible exclusionary doctrine: the suppression of the truth in the factfinding process.

With regard to the deterrent or non-deterrent effect of the Rule, the language of Mr. Justice White dissenting in *Stone* v. *Powell, supra,* is instructive:

> . . . as time went on after coming to this bench, I became convinced that *Weeks* v. *United States,* [citations omitted], and *Mapp* v. *Ohio* had overshot their mark insofar as they aimed to deter lawless action by law enforcement personnel and that *in many of its applications the exclusionary rule was not advancing that aim in the slightest* and that in this respect it was a senseless obstacle to arriving at the truth in many criminal trials. 428 U. S. 465 at 537-538. (Emphasis supplied.)

Recent studies suggest that there is no empirical evidence for the deterrent effect of the Rule.[5] We submit, however, that, in addition to empirical studies, principles of common sense and logic dictate that the theoretical case for deterrence is shaky.

For a deterrent to be effective, the person subject to that deterrent must know with reasonable certainty just what conduct on his part is liable to the sanction involved. Three conditions, common to most search and seizure situations, militate against a law enforcement officer having such certainty:

1. He is generally untrained in the law, with the exception of what he has learned in the training academy or picked up on the street;[6]

5. Oaks, *Studying the Exclusionary Rule in Search and Seizure,* 37 U. Chi. L. Rev. 665 (1970); Spiotto, *Search and Seizure: An Empirical Study of the Exclusionary Rule and Its Alternatives,* 2 Journ. Legal Studies 243 (1973); but cf. Cannon, *Is the Exclusionary Rule in Failing Health: Some New Data and a Plea Against a Precipitous Conclusion,* 62 Ky. L. Rev. 349 (1974).

6. See, *Bivens, supra,* Burger, C. J., dissenting: "Policemen do not have the time, inclination or training to read and grasp the

(Footnote continued on next page.)

2. The law of search and seizure has developed into such a convoluted and complex state that judges of different courts, or even judges sitting on the same court, cannot agree about it;[7] and,
3. Many search and seizure decisions are made by officers acting under the exigencies (and sometimes the dangers) of "on-the-street" police work; these situations leave little time for contemplation of abstract Fourth Amendment principles.

Given these conditions, we can postulate that, in a large number of instances, unless the case is so clear that an officer *knows with certainty* that his conduct is illegal (a rarity in search and seizure law) he will act in the good faith belief that his conduct is reasonable, and necessary, thus negating in large measure any deterrent effect of a later suppression of the evidence.

Mr. Justice White, dissenting in *Stone* v. *Powell, supra,* described some of the numerous variables which confront police officers in search and seizure situations and then concluded: "In any of these situations, which occur repeatedly, when the officer is convinced that he has probable cause to arrest he will very likely make the arrest." 428 U. S., at 538-539.

Against this background of very realistic doubt as to a meaningful deterrent effect of the Exclusionary Rule must be weighed the cost to society of its application. This was summed up by Mr. Justice Powell in *Stone* v. *Powell, supra*:

> The costs of applying the Exclusionary Rule even at trial and on direct review are well known: the focus of the trial, and the attention of the participants therein, is

(Footnote continued from preceding page.)

nuances of the appellate opinions that ultimately define the standards of conduct that they are to follow." 403 U. S. 388, at 417.

7. *Ibid.* "The issues that [search and seizure] decisions resolve often admit of neither easy nor obvious answers, as sharply divided courts on what is or is not 'reasonable' amply demonstrate. Nor can judges, in all candor, forget that opinions sometimes lack helpful clarity."

> diverted from the ultimate question of guilt or innocence that should be the central concern in a criminal proceeding. Moreover the physical evidence sought to be excluded is typically reliable and often the most probative information bearing on the guilt or innocence of the defendant.
>
> * * * * *
>
> Application of the rule thus deflects the truthfinding process and often frees the guilty. 428 U. S., at 489-490. [Footnotes omitted.]

The lack of deterrence—cost to society dichotomy in the Exclusionary Rule controversy has been the basis of numerous decisions of this Court which have refused to expand the scope of the Rule beyond the trial and direct appeal of the individual actually aggrieved by the Fourth Amendment violations.[8] We submit that given the speculative nature of the Rule's deterrent effect and the acknowledged corrosive effect of its application in our criminal justice system, the granting of standing to Petitioners Rakas and King would be a totally unwarranted expansion of the scope of this much-discredited doctrine.

C. The Instant Case in Particular Is Not the Sort of Case That Would Mandate the Expansion of the Exclusionary Rule.

A major criticism of the Exclusionary Rule is its inflexibility. Mr. Chief Justice Burger, dissenting in *Bivens, supra,* precisely described this anomaly of the Rule:

> Although unfortunately ineffective, the Exclusionary Rule has increasingly been characterized by a single, monolithic and drastic judicial response to all official violations

8. *Linkletter* v. *Walker,* 381 U. S. 618 (1965), the Exclusionary Rule is not to be applied retrospectively; *Walder* v. *United States,* 347 U. S. 62 (1954), government may use illegally seized evidence to impeach a defendant's credibility; *U. S.* v. *Calandra,* 414 U. S. 338 (1974), illegally seized evidence may be used in grand jury proceedings; *U. S.* v. *Janis,* 428 U. S. 433 (1976), illegally seized evidence may be used in civil proceedings; *U. S.* v. *Ceccolini,* ..... U. S. ....., 22 Cr. L. 3063, 3070 (1978), living witness testimony which was a "fruit" of an illegal search may be used in a perjury conviction.

> of legal norms. Inadvertent errors of judgment that do not work any injustice will inevitably occur under the pressure of police work. These honest mistakes have been treated in the same way as deliberate and flagrant *Irvine*-type violations of the Fourth Amendment. 403 U. S., at 418.

Our contention in the previous section was that now is not the time to expand the scope of the Exclusionary Rule; however, if such expansion *is* contemplated by extending standing, we submit that the distinction between wilful and flagrant violations on the one hand and "honest mistakes" on the part of law enforcement officers on the other should be of critical importance.

The facts of the instant case indicate that the officers were acting in complete good faith. Indeed, the officers' actions in this case could be considered an example of alert and effective police work.

The robbery took place at about 8:30 p.m. on February 4, 1975, clearly during nighttime hours.[9] (R. 138.) About 15 minutes later Officer Sollers received a radio call describing the getaway car as a blue Plymouth Road Runner with a certain license plate. (R. 114, 120, 123, 192.) Some ten minutes later he spotted a purple Plymouth Road Runner with a different license plate approximately four and a half miles from the robbery scene. (R. 120-121, 191-192, 207-208.) Two males, wearing ski-masks had committed the robbery; two males and two females were in the automobile that Officer Sollers saw. (R. 113-114, 121-125.)

Proximity in time and space were clearly established; with regard to the description of the automobile, an experienced police officer could have considered two things:

1. Witness' descriptions of the color of a getaway car often vary significantly depending upon the perception of colors, and, especially at night, under artificial lighting, a purple car could well have appeared blue.

9. Citations to the trial court transcripts will contain the prefix "R".

2. It is extremely common for robbers to wire (or otherwise temporarily affix) one set of license plates over their real plates in order to confuse pursuers.

Thus, it was certainly reasonable for Officer Sollers to believe that the subject car might be the getaway car.[10] He followed the car until it stopped at a lounge and observed the occupants leave the car and enter the lounge. (R. 113, 115.) He then called the Sheriff's Office, another indication that the officer was doing everything in his power to establish that the car was, in fact, the getaway car.

Officer Sollers learned from the Sheriff's Office that one of the male suspects, wearing a blue shirt, matched the limited description given of one of the robbers. (R. 116.) Other officers were called to assist Officer Sollers by the dispatcher, and Officer Sollers then stopped and searched the car after it left the lounge. The fact that other officers were summoned to assist is further evidence of the good faith belief of the police that they were dealing with armed robbers; good police practice demands that an officer be assisted if possible when dealing with potentially dangerous and armed men.

Based upon his observations and other information made available to him, it appears clear that the officer's good faith belief that a crime had been committed, and that at least two of the persons to be stopped committed it, was reasonable. His only other option would have been to "shrug his shoulders and allow a crime to occur or a criminal to escape,"[11] which the law does not require him to do.[12]

10. Whether there was, in law, probable cause to stop and search the car has not been determined because of the lower court's ruling that Petitioners had no standing to object to the introduction of the rifle. Our analysis of the facts is being made for the purpose of demonstrating good faith rather than to attempt to establish probable cause in the legal sense.

11. *Adams* v. *Williams*, 407 U. S. 143, at 145.

12. "Neither officers nor judges issuing arrest warrants need delay apprehension of the suspect until unquestioned proof against him is accumulated. The officer may be shirking his duty if he does so." *Stone* v. *Powell*, 428 U. S. 465, at 539, White, J., dissenting.

From the foregoing analysis, we submit that there can be no question that the stop and search was not a wilful or flagrant Fourth Amendment violation.

It is precisely in such cases that the rationale for the Exclusionary Rule fails. As Mr. Justice White pointed out in his dissenting opinion in *Stone* v. *Powell, supra:*

> When law enforcement personnel have acted mistakenly, but in good faith and on reasonable grounds, and yet the evidence they have seized is later excluded, *the exclusion can have no deterrent effect*. The officers, if they do their duty, will act in similar fashion in similar circumstances in the future; and the only consequence of the rule as presently administered is that unimpeachable and probative evidence is kept from the trier of fact and the truth-finding function of proceedings is substantially impaired or a trial totally aborted. 428 U. S., at 539. (Emphasis supplied.)

Thus, given the facts and circumstances of the instant case, any extension of the scope of the Exclusionary Rule by according standing to the petitioners would be unwarranted and would do little or nothing to safeguard Fourth Amendment rights.

CONCLUSION.

Any increase in the number of persons accorded standing to contest an allegedly illegal search and seizure would drastically expand the scope of the Exclusionary Rule. The Rule is ineffective in good faith cases such as this, and it exacts too high a price from society by suppressing the truth and freeing the guilty. Consequently, such an expansion would be unwarranted.

For the foregoing reasons we urge this Court to affirm the judgment of the Appellate Court of Illinois.

Respectfully submitted,

FRED E. INBAU, ESQ.,
FRANK CARRINGTON, ESQ.,
WAYNE W. SCHMIDT, ESQ.,
ROBERT SMITH, ESQ.,
Americans for Effective Law Enforcement, Inc.,
960 State National Bank Plaza,
Evanston, Illinois 60201,
Counsel for Amicus Curiae.

Of Counsel:
JAMES P. COSTELLO,
JOHN F. FENNIG,
RICHARD J. VITTENSON,
Americans for Effective Law Enforcement, Inc.